IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

CRL.A.No. 694 of 2003(A)

(AGAINST THE JUDGMENT IN CC.226/2001 of JUDL.MAGISTRATE OF FIRST CLASS-I, THAMARASSERY DATED 21/11/2002)

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PETITIONER:COMPLAINANT:

K.C.ABDURAHIMAN, S/O. AMMOTTY
KILACHATHINDEKAYIL VEEDU, PARAPPANPOYIL,
THAMARASSERY.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: ACCUSED & STATE:

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1. ANTHRUMANKUTTY HAJI, S/O. SAITHUTTY
KALLADAPOYIL VEEDU, THAMARASSERY.

2. STATE OF KERALA, REP.BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

K.R. UDAYABHANU, J.

CRL.A.NO. 694 OF 2003

DATED THIS THE24th September 2007

JUDGMENT

The appellant is the complainant in C.C.No.226/2001 in the Court of Judicial Magistrate of First Class-I, Thamarassery with respect to the offence under Section 420 I.P.C. in which the accused was acquitted.

2. The case of the complainant is that the accused borrowed a sum of Rs. 50,000/-, and towards the repayment of the same issued impugned cheque dated 8-12-2000 for Rs.50,000/- promising that the cheque when presented for encashment will be honoured. The cheque when presented for encashment, was dishonoured as the account remained closed.

3. PW2, the Bank Manager has deposed that on 9-9-1997 itself the account was closed. The same was a current account for one year for cash credit facility. The term expired on 9-9-1997 and the Bank Manager intimated the above fact vide four notices issued dated 7-11-1997, 12-6-1998, 13-1-2000 and 18-1-2000 respectively. PW1 has testified as to the borrowal and as to the promise of the accused that the amount shall be repaid on the impugned cheque presented before the Bank on 18-12-2000. The borrowal is dated 18-11-2000.

The suggestion in the cross examination is that there was no such transaction and that the signature in Ext.P1 is not that of the accused. PW2 has identified Ext.P1 as one of the cheque leaves issued to the accused with respect to his account in the bank. In the circumstances, it is the contention of the counsel for the appellant that once it is proved that the cheque leaf belonged to the accused and even if the signature varies, the same is not relevant for the proceedings under Section 420 I.P.C. It is the case of the complainant that the cheque was issued by the accused in front of him and signed by the accused. The court below has verified the signature in the cheque leaf and handwriting therein, compared the same with the handwriting and the signature in the vakalath. As pointed out by counsel for the appellant, the identity of the signature is not the sole matter to be considered as the offence is under Section 420 I.P.C. as signature can be put in a different manner. There is no explanation as to how the cheque leaf happened to be with the complainant. There is no explanation as to the same in the evidence of DW1. In the circumstances, I find that there is nothing to disbelieve the testimony of PW1 and that of PW2 and I find that the ingredients of Section 420 I.P.C. stands established. The order of the court below acquitting the accused is set aside. The accused/respondent is convicted for the offence under Section 420

I.P.C. and sentenced to undergo imprisonment till the rising of the court and to pay a sum of Rs.50,000/- as compensation and in default to undergo simple imprisonment for six months. He shall appear before the Judicial Magistrate of First Class-I, Thamarassery on 26-11-2002 to receive sentence. The appeal is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. NO. 694 OF 2003

JUDGMENT

24-9-2007